(28,327)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1921.

No. 372.

BALTIMORE AND OHIO RAILROAD COMPANY, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 6, 1921.

1 I. *Petition. Filed November* 30, 1920.

In the Court of Claims of the United States.

No. 34744.

BALTIMORE & OHIO RAILROAD COMPANY

vs.

THE UNITED STATES.

Petition.

(Filed November 30, 1920.)

To the Honorable the Chief Justice and Judges of the Court of Claims:

Your petitioner respectfully shows unto your honors the following facts:

1. Petitioner is a corporation organized under the laws of the State of Maryland and operates, and at the time hereinafter stated did operate, a system of railroads in interstate commerce in the United States. That on September 22, 1919, petitioner filed a claim for refund of stamp taxes erroneously or illegally collected from it by the United States, upon the proper form of the Bureau of
2 Internal Revenue, in the sum of $55,158.00, and based its claim for refund upon the ruling of the Acting Commissioner of Internal Revenue, dated April 18, 1919, in a letter he wrote to the Corporation Trust Company of New York, New York, in which he stated:

"You are advised that the deeds of conveyance in question are not subject to stamp tax under subdivision 7, Schedule A, act of 1918, provided that no valuable consideration passed from the grantee to the grantor."

In said claim for refund your petitioner set forth a certain list of deeds, thirteen in number, given October 1, 1915, by its subsidiary companies to your petitioner, with the amount of stamps attached, and which were canceled October 29, 1915. Said deeds were given without any valuable consideration passing from the grantee companies to the grantor company, your petitioner, and said deeds of conveyance were prepared for a nominal consideration for the purpose of mortgaging its entire property to meet urgent operative needs. Following is a list of the deeds, with the name of each, the date of each, and the amount of revenue stamps affixed to each one:

Name.	Date of deed.	Amt. revenue stamps.
Akron & Chicago Jnc. R. R. Co.	Oct. 1, 1915	$6,529.00
Central Ohio R. R. Co.	do.	7,190.00
Cleveland, Lorain & Wheel. R. R. Co.	do.	13,997.00
Cleve. Terminal & Valley R. R. Co.	do.	5,238.00
Cleve., Wooster & Mus. Vy. R. R. Co.	do.	231.50
Col's & Cinit. Midland R. R. Co.	do.	3,491.00
Eastern Ohio R. R. Co.	do.	208.50
Mahoning Valley Western R. R. Co.	do.	4,349.50
Ohio Midland R. R. Co.	do.	979.00
Pittsburgh, Cleveland & Toledo	do.	3,599.50
Pitts., Painesville & Fpt. Ry. Co.	do.	1,584.50
San., Mans. & Newark R. R. Co.	do.	4,866.00
Trumbull & Mahoning R. R. Co.	do.	2,894.50
		$55,158.00

3 The original deeds as listed above, with canceled stamps affixed thereto, were attached to your petitioner's said claim for refund and thereby became a part of said claim for refund and were duly filed with the Commissioner of Internal Revenue.

2. Under date of October 2, 1919, the Commissioner of Internal Revenue wrote a letter to your petitioner rejecting its said claim for refund of stamp taxes erroneously or illegally paid and giving the reason that the stamps in question, having been purchased in 1915, are barred from redemption by the two years' limitation imposed by the act of May 12, 1900 (31 Statute, 177).

3. On December 22, 1919, your petitioner wrote a letter to the Commissioner of Internal Revenue asking for a hearing before him and vigorously dissenting from his action rejecting its claim for refund of stamp taxes and stating that the two years' limitation provision of the act of May 12, 1900 (31 Statute, 177), has no application whatsoever to the said claim for refund of stamp taxes.

4. Upon hearing held before the Solicitor of Internal Revenue, and also personally before the Commissioner of Internal Revenue, your petitioner called to the attention of each of the said officers its informal claim in abatement filed by it under date of February 11, 1915, in the Bureau of Internal Revenue, in which it specifically set forth in detail three of the deeds of conveyance listed in its claim for refund as follows:

Mahoning Valley Western R. R. Co.
Akron & Chicago Junction R. R. Co.
Central Ohio R. R. Co.

Each of said tendered deeds contained only a nominal consideration and conveyed property of each of the subsidiary corporations to the parent corporation. Said informal claim in abatement stated
4 that no stamp tax should apply to these tendered deeds and asked for a ruling of the Commissioner of Internal Revenue.

The Commissioner of Internal Revenue, by letter to your petitioner under date of February 25, 1915, rejected the informal claim in abatement and held that the stamp tax applied. Under said rejection by the Commissioner of Internal Revenue your petitioner had no other alternative but to pay the stamp taxes on the three deeds and ten other deeds which conveyed property from certain subsidiary companies to the parent corporation for a nominal consideration, which it did, as shown by the original deeds filed with its claim for refund.

5. Your petitioner contended before the Commissioner of Internal Revenue, and now contends, that its informal claim in abatement has been properly amended and perfected and duly presented under the internal-revenue laws and the regurelations of the Bureau of Internal Revenue providing for the refunding of stamp taxes illegally or erroneously paid to the United States, and is therefore entitled to the full amount of its said claim for refund of $55,158.00 by reason of the said ruling of the Acting Commissioner of Internal Revenue of April 19, 1919, as hereinbefore set forth. The provisions of the Internal Revenue Act of October 22, 1914 (38 Statute, 745), relating to deeds of conveyance is identical with the provisions of the internal-revenue statute of February 24, 1919 (40 Statute, 1057), relating to deeds of conveyance, and the ruling of the Acting Commissioner of Internal Revenue of April 18, 1919, relating to deeds of conveyance from subsidiary to parent corporation- for a nominal consideration applies with equal force to the Internal Revenue Act of October 22, 1914 (38 Statute, 745), relating to deeds of conveyance.

6. That no action upon your petitioner's foregoing claim has been had before Congress. That said claim was presented to the Commissioner of Internal Revenue, Treasury Department, and that the total amount of said claim, $55,158.00, was disallowed by the Com-
5 missioner of Internal Revenue, and your petitioner protested the disallowance of the said amount to the Commissioner of Internal Revenue in writing on December 22, 1919, and March 12, 1920, but to no avail, and said Commissioner of Internal Revenue adheres to his said action of rejection. That no transfer or assignment of said claim or any part thereof or interest therein has been made. That said claim is now owned by your claimant, and no other person or corporation is the owner thereof or is interested therein, and that your petitioner is justly entitled to the amount herein claimed from the United States after allowing all just credits and set-offs; that your claimant has at all times borne true allegiance to the United States, and has not in any way voluntarily abetted or given encouragement to rebellion against said Government.

Prayers.

Wherefore, your claimant prays:

1. That the court will render a judgment against the United States in favor of your claimant for the payment by the United States to your claimant of the said sum of fifty-five thousand one hundred and fifty-eight dollars ($55,158.00).

2. That your claimant may have such other and further relief as the nature of the case may require and to the court may seem meet and proper.

BALTIMORE AND OHIO RAILROAD COMPANY,
By W. D. OWENS,
Assistant Comptroller.

JOHN F. McCARRON,
Attorney of Record.
GEORGE E. HAMILTON,
Of Counsel.

6 STATE OF MARYLAND, *To wit:*

W. D. Owens, being duly sworn, says he is assistant comptroller for the Baltimore & Ohio Railroad Company; that he has authority to subscribe to and verify the foregoing petition from said company; that he has read said petition, knows the contents thereof and the facts therein stated, and that he believes the same to be true.

W. D. OWENS.

Subscribed and sworn to before me this 19th day of November, A. D. 1920.

GEORGE W. HAULENBEEK,
Notary Public, State of Maryland.

My commission expires May 1, 1922.

STATE OF MARYLAND,
City of Baltimore, To wit:

G. F. May, being first duly sworn, says he is assistant secretary of the Baltimore & Ohio Railroad Company; that W. D. Owens, assistant comptroller, who has subscribed to and verified the petition of said company annexed hereto, is authorized to do so.

G. F. MAY,
Assistant Secretary.

Subscribed and sworn to before me this 19th day of November, A. D. 1920.

GEORGE W. HAULENBEEK,
Notary Public, State of Maryland.

My commission expires May 1, 1922.

7 II. *History of Proceedings.*

On January 24, 1921, the defendant filed a motion to require plaintiff to make its petition more definite and certain.

On February 8, 1921, the Court overruled said motion but without prejudice to any question that may be presented on demurrer or otherwise.

III. *Defendant's Demurrer. Filed April* 4, 1921.

The United States, by its Attorney General, demurs to the petition filed herein, for the following reasons—

1. The petition does not state facts sufficient to constitute a cause of action;

2. The petition does not state a cause of action within the jurisdiction of this Court.

ANNETTE ABBOTT ADAMS,
Assistant Attorney General.

FRED K. DYAR,
Special Assistant to the Attorney General.

WM. D. HARRIS,
Attorney.

IV. *Argument and Submission of Demurrer.*

On April 11, 1921, the demurrer was argued and submitted by Fred K. Dyar, Esq., for defendant, and John F. McCarron, Esq., for plaintiff.

8 V. *Opinion of the Court by Booth, J. Filed May* 16, 1921.

Booth, *Judge*, delivered the opinion of the court:

This is a demurrer to plaintiff's petition. The petition of the plaintiff railroad company alleges a cause of action predicated upon the refusal of the Commissioner of Internal Revenue to refund the claimed sum of $55,158 illegally exacted as stamp taxes upon certain deeds of conveyance to it executed and delivered in 1915. On October 1, 1915, thirteen railroad companies executed and delivered to the plaintiff company deeds conveying the property of these companies to the plaintiff. The plaintiff company having some doubt as to the application of the stamp act of October 22, 1914 (38 Stat., 745), to the transaction applied to the Commissioner of Internal Revenue for a ruling thereon, at the time exhibiting three only of said deeds. The commissioner held adversely to this contention, and acquiescing therein the plaintiff company without protest affixed to each of said deeds the requisite amount of stamps, totaling the sum now sued for. Four years thereafter the commissioner in construing the act of 1918 held "that where no valuable consideration passed, stamps were not required on conveyances."

The plaintiff's transaction of 1915 being similar in all respects to the above ruling of the commissioner it immediately provoked a renewed, and what the plaintiff now claims an amended, effort to avail itself of the final ruling of the commissioner and collect the stamp taxes paid by it in 1915. To this end, therefore, on September 22, 1919, it filed with the commissioner its claim for a refund of said taxes, which was rejected because of the intervention of the statute of limitations. A hearing was granted the plaintiff, and the same contentions now advanced were likewise advanced before the com-

missioner. The argument now constructed rests upon a strenuous insistence that the claim for a refund filed in 1919 is no more nor less than an amendment of its so-called informal claim for an abatement filed in 1915, thus perfecting the former and for the first time claiming a refund of the taxes, thereby escaping the statute of limitations and enabling the plaintiff to maintain the present suit upon the rejection of its so-called perfected claim by the commissioner. In other words, the alleged informal claim for abatement of the taxes by this belated process is converted into a primary claim for a refund of the same notwithstanding the long repose of the former, and which is admittedly without vitality unless it can be thus revived.

9 Designating a paper "an informal claim for abatement" in a suit to recover a refund of taxes paid is not good pleading. It is the conclusion of the pleader. Fortunately in this case sufficient positive facts are alleged which disclose the transaction in detail. The facts alleged bear absolutely no similarity to either a claim for abatement or refund of the taxes now alleged to be illegal. On the contrary, prior to affixing the stamps to the deeds in issue the plaintiff company exhibited to the commissioner three specific copies of the deeds, each containing only a nominal consideration, stating that in its opinion no stamp tax should apply to said deeds, and asking for a ruling of the commissioner with respect thereto. The commissioner promptly complied with the request, and the plaintiff instead of asking for an abatement of the same thereafter purchased the stamps, affixed them to the deeds, canceled the same, and accepted the ruling of the commissioner, never seeking in any manner to challenge its conclusiveness until some four years later it discovered in the decision of a case in which it was in nowise concerned there existed a possibility to proceed now as it should have proceeded four years ago. The widest latitude has been allowed the vigilant in the matter of amendment of claims for refund of illegal taxes, but no authority has been cited wherein the courts have gone to the extreme, no matter how apparent the equities of the situation, in sustaining a claim after a long repose and which would doubtless have continued in such a state save for the persistence and vigilance of a later and another claimant, the ruling in whose case affords prospects of recovery for an abandoned claim.

We think the commissioner was right when he rejected the claim. Revised Statutes, section 3226, provides as follows:

"No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected * * * until appeal shall have been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard * * * and a decision of the commissioner has been had therein: Provided, That if such decision is delayed more than six months from the date of such appeal then the said suit may be brought * * *."

The act of May 12, 1900 (31 Stat., 177), as amended by the act of June 30, 1902 (32 Stat., 506), provides, in part, as follows:

"That the Commissioner of Internal Revenue, subject to regula-

tions prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled * * * or in any manner wrongfully collected * * *: Provided further, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government."

Rock Island, Arkansas & Louisiana Ry. Co. v. United States, decided by the Supreme Court November 22, 1920, 254 U. S., 141.

The demurrer is sustained and petition dismissed. It is so ordered.

Graham, Judge; Hay, Judge; and Downey, Judge, concur.

Campbell, Chief Justice, took no part in the decision of this case.

10 VI. *Judgment of the Court.*

At a Court of Claims held in the City of Washington on the 16th day of May, A. D., 1921, judgment was ordered to be entered as follows:

This case was submitted upon the defendant's demurrer to the plaintiff's petition, on consideration whereof the court is of the opinion that the demurrer is well taken.

It is therefore ordered, adjudged and decreed that the defendant's said demurrer to the plaintiff's petition be sustained, and that the petition be and the same is hereby dismissed.

By THE COURT.

VII. *Plaintiff's Application for and Allowance of an Appeal.*

Now comes the Baltimore and Ohio Railroad Company by its attorneys, George E. Hamilton, of Counsel, and John F. McCarron, Attorney of Record, and appeals to the Supreme Court of the United States from the decision of this honorable court rendered in this cause in favor of the United States on May 16, 1921.

Very respectfully,

GEORGE E. HAMILTON,
Of Counsel.

JOHN F. McCARRON,
Attorney of Record.

Filed June 20, 1921.

Ordered: That the above appeal be allowed as prayed for.

EDW. K. CAMPBELL,
Chief Justice.

June 21, 1921.

11 Court of Claims.

No. 34744.

Baltimore & Ohio Railroad Company

vs.

The United States.

I, F. C. Kleinschmidt, Assistant Clerk Court of Claims, certify that the foregoing are true transcripts of the pleadings in the above-entitled cause; of the argument and submission of demurrer; of the opinion of the Court by Booth, J.; of the judgment of the Court; of the plaintiff's application for and the allowance of an appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said Court this Twenty-second day of June, A. D., 1921.

[Seal Court of Claims.]

F. C. KLEINSCHMIDT,
Assistant Clerk Court of Claims.

Endorsed on cover: File No. 28327. Court of Claims. Term No. 372. Baltimore & Ohio Railroad Company, appellant, vs. The United States. Filed June 24th, 1921. File No. 28327.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1922, No. 99.

(Was No. 372, October Term, 1921.)

BALTIMORE & OHIO RAILROAD COMPANY,
Appellant,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

GEORGE E. HAMILTON,
JOHN F. McCARRON,
Attorneys for Appellant.

R. MARSDEN SMITH,
Of Counsel.

(28,327)

INDEX.

Decisions Cited.

Statutes and Regulations Cited.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1922, No. 99.

(Was No. 372, October Term, 1921.)

BALTIMORE AND OHIO RAILROAD COMPANY, Appellant,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

STATEMENT.

The cause herein comes to this court on appeal from the Court of Claims.

On September 22, 1919, appellant filed in the Internal Revenue Bureau a claim for refund of stamp taxes erroneously or illegally collected from it by the United States, upon the proper form of the Bureau of Internal Revenue in the amount of

$55,158.00 for the recovery of said amount paid by appellant to the United States as stamp taxes on a certain list of deeds thirteen in number, given October 1, 1915, by its subsidiary companies to appellant. Said deeds were given without any valuable consideration passing from the subsidiary companies to the parent company, your appellant. The said deeds were prepared for a nominal consideration to complete transfer of title from the subsidiary companies to the parent company to meet urgent operative needs of the latter and for the purpose of enabling appellant to mortgage its entire property. This could only be accomplished by having the legal title of the subsidiary companies vested in the parent company, your appellant, and not through control of said subsidiary companies by appellant's ownership in stocks and bonds and operation. Appellant based its claim for refund upon the ruling of the Acting Commissioner of Internal Revenue, dated April 18, 1919, which is in part as follows:

> "You are advised that the deeds of conveyance in question are not subject to stamp tax under subdivision 7, Schedule A, Act of 1918, provided that no valuable consideration passed from the grantee to the grantor."

Under the aforesaid ruling of the Commissioner of Internal Revenue the deeds are not subject to stamp taxes, "where a parent corporation decided to dissolve some of its subsidiaries and to take over their real property, deeds of conveyance having

been prepared for a nominal consideration, no actual consideration passing to the subsidiary companies."

Attached to petitioner's claim for refund were the thirteen original deeds with canceled stamps affixed thereto and were a part of the claim for refund.

The Commissioner of Internal Revenue rejected the claim for refund under date of October 2, 1919, on the ground that the stamps in question having been purchased in 1915 are barred from redemption by the two years' limitation imposed by the Act of May 12, 1900 (31 Stat., 177).

Upon hearing held before the Solicitor and Commissioner of Internal Revenue, which was subsequent to the rejection of the refund claim, appellant called to the attention of each of the said officers its informal claim for abatement filed by it under date of February 11, 1915, in which it specifically set forth in detail three of the deeds of conveyance listed in its claim for refund. Each of said tendered deeds contained only a nominal consideration and conveyed property of each of the subsidiary corporations to the parent corporation. In said informal claim for abatement it is stated that no stamp tax should apply to these deeds under the Act of October 22, 1914 (38 Stat., 745), and asked for a ruling of the Commissioner of Internal Revenue. The Commissioner of Internal Revenue by letter to appellant under date of February 25, 1915, rejected the informal claim for abatement

and held that the stamp tax applied. Under said rejection by the Commissioner of Internal Revenue appellant had no other alternative but to pay the stamp taxes on the thirteen deeds, which it did.

Appellant contended in a hearing before the Commissioner of Internal Revenue that its informal claim for abatement had been properly amended and perfected and duly presented under the Internal Revenue laws and the regulations of the Bureau of Internal Revenue and therefore its claim for refund of the stamp taxes erroneously or illegally paid should be made to appellant. Relief was denied appellant.

Appellant brought suit in the Court of Claims for the refund of the stamp taxes and demurrer being filed by appellee to appellant's petition the demurrer was argued before the court and a written opinion was handed down by the court dismissing appellant's petition.

SPECIFICATION OF ERRORS.

1. The appellant claims that the Court of Claims erred in sustaining the defendant's demurrer as the petition does state facts sufficient to constitute a cause of action and said cause of action is within the jurisdiction of the court.

2. The court erred in holding that the facts do not constitute a claim for abatement or refund of taxes and that it was necessary to file a second claim for abatement of the taxes, for the law and regulations governing the filing of Internal Rev-

enue claims for abatement and refund of taxes and the practice before the Internal Revenue Bureau regarding same do not require the filing of a second claim for abatement where a claim is already on file whether it be formal or informal.

3. The court erred in its application of part of Section 3226 of the Revised Statutes and also in its application of the Act of May 12, 1900, 31 Stat., 177, as amended by the Act of June 30, 1902, 32 Stat., 506, as said acts have no application whatsoever to the facts alleged in the petition of the appellant as the appellant complied with Section 3226 in the filing of its suit for refund of stamp taxes and the statute of limitations as applied by the court under the Act of May 12, 1900 (31 Stat., 177), has no application to this case as the statute is no bar to the present suit.

4. The court erred in deciding that the informal claim for abatement could not be amended by the claim for refund, for the Internal Revenue laws and regulations governing the case admit of such amendment.

BRIEF.

ARGUMENT.

POINT 1.

COURT OF CLAIMS ERRED IN SUSTAINING DEMURRER.

We shall first address ourselves to the decision of the Court of Claims and point out in more detail what we consider the errors of that court in its decision.

The court said:

> "The plaintiff company having some doubt as to the application of the stamp act of October 22, 1914 (38 Stat., 745), to the transaction applied to the Commissioner of Internal Revenue for a ruling thereon at the time exhibiting three only of said deeds. The Commissioner held adversely to this contention, and acquiescing therein the plaintiff company without protest affixed to each of said deeds the requisite amount of stamps, totaling the sum now sued for." (Rec., p. 5.)

We respectfully call to the court's attention that the Court of Claims erred in not stating that a protest had been filed against the imposition of the stamp tax for appellant alleged in its petition as follows:

> "Upon hearing held before the Solicitor of Internal Revenue, and also personally

before the Commissioner of Internal Revenue, your petitioner called to the attention of each of the said officers its informal claim in abatement filed by it under date of February 11, 1915, in the Bureau of Internal Revenue, in which it specifically set forth in detail three of the deeds of conveyance listed in its claim for refund as follows:

Mahoning Valley Western R. R. Co.
Akron & Chicago Junction R. R. Co.
Central Ohio R. R. Co.

"Each of said tendered deeds contained only a nominal consideration and conveyed property of each of the subsidiary corporations to the parent corporation. Said informal claim in abatement stated that no stamp tax should apply to these tendered deeds and asked for a ruling of the Commissioner of Internal Revenue."

The informal claim in abatement of your petitioner filed with the Commissioner of Internal Revenue as shown by the petition (Rec., p. 2) is a plain protest against the imposition of the stamp taxes in question. If your petitioner believed that the stamp taxes were due the Government, there never would have been any necessity for the informal claim in abatement. Had it been on the regular form prescribed by the Bureau of Internal Revenue for a claim for abatement of taxes it could not have been more clearly shown and the protest made with more emphasis than was set forth in the informal claim for abatement. An examination of

the regular form of a claim for abatement (Form 47) issued by the Bureau of Internal Revenue will show the following:

> "Deponent verily believes that the amount stated in item 4 should be abated and claimant now asks and demands abatement of said amount for the following reasons."

The reasons are then set forth.

In the informal claim submitted by your appellant on February 11, 1915, the facts in the three transactions were set forth and the specific statement made that no stamp tax should apply. While set forth in an informal manner the Bureau of Internal Revenue recognized the informal claim by making reply to it under date of February 25, 1915, and holding that the deeds in question were taxable under the Revenue Act of October 22, 1914. Petitioner in its said informal claim in abatement asked the forbearance of the Commissioner of Internal Revenue by its protest against the imposition of said tax. And in doing that, there at once came into being an informal claim containing all the characteristics of a claim as defined by this court in the following language:

> "It is, in a just juridical sense, a demand of some matter as of right made by one person upon another to do or forbear to do some act or thing as a matter of duty. A more limited but at the same time an equally expressive definition was given by Lord Dyer, as cited in Stowel *vs.* Zouch Plowd, 359, and

> it is equally applicable to the present case; that a claim is a challenge by a man of the propriety or ownership of a thing, which he has not in possession, but which is wrongfully detained from him."
>
> Prigg *vs.* Pennsylvania, 16 Peters, 539.

In view of the aforesaid authoritative definition by this Court it cannot be denied that when it was stated in petitioner's informal claim in abatement that no stamp taxes should apply that a demand was at once made which was a challenge to the United States of its ownership or right to the money involved in the stamp taxes which the Bureau of Internal Revenue subsequently held must be paid. Unquestionably there was, and in view of that situation, under the doctrine laid down in the Prigg's case by this court, a claim had come into being on behalf of the Baltimore and Ohio Railroad Company against the United States. We do not for one moment contend that that claim in its first inception was a formal one, for it would have had to be made on the regular form (Form 47) prescribed by the Bureau of Internal Revenue for the abatement of taxes erroneously or illegally assessed. It was, however, an informal claim capable of being perfected and amended, for the Attorney General, in 14th Opinions of the Attorney General, at page 615, states:

> "An application filed with the Commissioner of Internal Revenue for the refund-

ing of taxes alleged to have been erroneously or illegally assessed and collected, though informal or defective, may nevertheless be regarded as a 'claim' within the meaning of section 44 of the act of June 6, 1872, chapter 315, so far at least, as to be the foundation for an amendment."

And continuing:

"Whenever a *bona fide* litigant or claimant brings his case before a tribunal having jurisdiction, I apprehend that such proceeding, even when 'fatally' informal, is usually held to be an action or claim, so far at least as to be a foundation for an amendment, and thus to be capable of becoming perfect by relation to its original institution, and so defeating a plea of 'limitation' (say) which otherwise might avail the defendant."

The court will respectfully note that section 44 of the act of June 6, 1872, chapter 315, is section 3228 of the Revised Statutes.

That the Commissioner of Internal Revenue has followed the above ruling of the Attorney General would appear by Regulations No. 14, Revised:

Instructions
Concerning the
Abatement and the Refunding of
Taxes and Penalties

Which Are Uncollectible, Abatable, or Refundable under the Provisions of Sections 3220 and 3221, Revised Statutes, Section 6, Act of March 1, 1879, or Other Acts.

and

The Redemption of or Allowance for Internal Revenue Stamps under the Provisions of the Act of May 12, 1900, as Amended by the Act of June 30, 1902.

On page 28 of said regulations, under "Statutes of Limitation," is stated:

> "All claims for the refunding of taxes or for the redemption of stamps presented to the collector for transmission to this office should be received and forwarded, notwithstanding the fact that in the opinion of the collector they may be barred by the statute of limitation. It frequently happens that while the formal application is not presented within two years, the taxpayer has applied by letter to the Commissioner of Internal Revenue for relief, and in no case should the collector refuse to forward a claim for the reason that it was not presented to him within two years after payment.
>
> "Claims for the abatement and refunding of taxes and redemption of stamps, when received at this office, are recorded, and if they are afterwards returned to the collector

> for amendment they should in all cases be returned to this office; even if new claims are prepared, such new claims should be considered as amendments to the original claims and should be inclosed therein. If for any reason the claims are returned to the claimants, claimants should be instructed to return the original claims."

When your petitioner filed its claim for refund on September 22, 1919, for the stamp taxes paid, it amended its informal claim of February 11, 1915, for it will be observed that three of the deeds listed in the refund claim—Mahoning Valley Western R. R. Co., Akron & Chicago Junction R. R. Co., and Central Ohio R. R. Co.—were fully set forth in petitioner's informal claim for abatement filed February 11, 1915. Your petitioner, by its claim for refund, perfected its claim in accordance with the internal-revenue laws and regulations governing the subject-matter of its claim.

The act of May 12, 1900 (31 Statute, 177), relating to the redemption of or allowance for internal revenue stamps provides in part as follows:

> "That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government, excepting documentary and proprietary stamps issued under the act of June thirteenth, eighteen hundred and ninety-eight, which stamps may be redeemed as hereinbefore authorized, upon presentation prior to the first day of July, nineteen hundred and four."

It will be observed that the act in question requires no specified form of application or presentation of a claim. And in the case of Bank of Greencastle *vs.* U. S., 15 Court of Claims, 225, this very point was passed upon on sections 3220 and 3228 of the Revised Statutes, which, as in the Act of May 12, 1900, require no specified form of application. The circumstances in the aforesaid case are as follows:

> "On the 30th of August, 1872, the claimant paid to an internal-revenue collector the sum of $136.55 as a tax on dividends under protest, alleging the assessment to have been illegal. On the 11th of March, 1876, a formal application was made to the Commissioner for a refund, and was returned July 17, 1876, for amendment. A subsequent amended application was made by the claimant and sworn to May 25, 1878, certified by the deputy collector June 1, and forwarded to the Commissioner by the collector June 13, 1878."

In deciding this case, the court said:

> "The statute requires no specified form of application or presentation of a claim. An informal appeal to the Commissioner, which is satisfactory to him and is accepted as such, is a sufficient presentation of a claim to lay the foundation of a more formal application to be made in conformity to the regulation, when required by the Commissioner, as was done in the present case (14th Opinions Atty. Gen., 615).

> "At the time of the payment of this tax the claimant entered a protest against its legality. A protest has never been held by the Commissioner of Internal Revenue as a condition precedent to the right of a claimant to appeal to him and to obtain a refund of taxes illegally assessed and collected. If this protest was in writing and forwarded to the Commissioner, he may have found from its language that it was made as, and was sufficient for, a primary application or presentation of a claim for refund."

It may be contended that no protest was made before the payment of the taxes in question, yet that would have availed this claimant nothing. The Court of Claims, in the case of Charles H. Adams *vs.* The United States, in 1 Ct. Cl., at page 306, has this to say:

> "The payment of an illegal tax is not voluntary though no protest be made, for the collector is bound to collect the tax, and a protest would be unavailing.
>
> "The evidence shows that the claimant protested against the assessment of the tax, and the assessor made return of that fact to the Department. Having been assessed and certified to the collector, he was bound to collect it, and any protest would have been unavailing. The law does not require him to do that which could have been of no effect."

In Johnson and Johnson *vs.* Herold, 161 Fed., page 598, the court said:

"The further point is raised by the defendants that the moneys paid by the plaintiffs for stamps, which they are seeking to recover, were paid without protest and voluntarily, and that therefore the suits must fail. The plaintiffs contend, however, that this question is, as between the parties hereto, *res judicata,* by reason of the judgments entered in the former suits; but assuming, for the purpose of argument, that it is not, I think the evidence shows that the payments were made under protest, and were not voluntary. It is quite impossible to read the evidence upon this point without reaching that conclusion. Even before the act became operative, a representative of the plaintiffs went to Washington with samples of all the articles and preparations manufactured by them, and the question of their liability to the stamp tax was gone over with the Internal Revenue Commissioner, or his deputy. The department decided that the articles here involved were taxable, and wrote a letter to that effect, which came to the plaintiffs through one of the defendants, and from that time on until the act was repealed the liability to taxation of these various articles and preparations was one of active and constant argument and dispute between the plaintiffs and the Revenue Department, and defendants. Protests were repeatedly made by the plaintiffs, both verbally and in writing, to the Revenue Department and to the collectors, and the plaintiffs were informed by the department that, if the articles which were declared by

the department to be subject to taxes were sold or exposed for sale without the requisite stamps, such action would be at their peril, and that all such unstamped articles would be seized and confiscated, and as a matter of fact there is evidence that some were so seized. Under the circumstances, it was wholly unnecessary for the plaintiffs to enter a protest with the collectors each time they purchased a stamp or stamps. Indeed, such action would have been well-nigh impossible, since they were constantly using stamps in large quantities, not only upon the disputed articles, but also upon very many other articles about which there either never had been any dispute, or, if there had, it had been adjusted. There was never at any time any doubt between the plaintiffs and the department and defendants as to which of their preparations the plaintiffs claimed were not, and which the department claimed were, subject to stamp duty, and it was to these disputed articles that the protests, verbal and written, were directed, and were understood by the defendants to be directed.

"Two cases are specially relied upon by the defendants to support their position viz.: Chesebrough *vs.* United States, 19[illegible] U. S., 253; 24 Sup. Ct., 262; 48 L. Ed., 432 and United States *vs.* New York & Cuba Mail Steamship Co., 200 U. S., 488; 26 Sup. Ct., 327; 50 L. Ed., 569, but they do not seem to me to control the question under consideration, or indeed to have much bearing upon it.

"In the first case mentioned, Chesebrough purchased stamps from a collector of internal revenue without intimating the purpose for which they were purchased, and without any protest made, or notice given at the time, that the purchaser claimed that the purchase was made under duress, and that the law requiring their use was unconstitutional. Under such circumstances, it was accordingly held that the purchase was purely voluntary, while in the other case substantially all that was decided that can be claimed to be pertinent appears in the second syllabus, in the following language:

" 'Affixing stamps required by the war revenue act of 1898 to the manifest of a vessel in order to obtain the clearance required by section 4197, Rev. St. (U. S. Comp. St. 1901, p. 2840), without presenting any claim or protest to the collector of internal revenue from whom the stamps are purchased, or to the collector of the port from whom the clearance is obtained, is not a payment under duress, but a voluntary payment, and the amount paid for the stamps cannot be recovered either on the ground of the unconstitutionality of the provisions of the war revenue act, requiring the stamps to be affixed, or under Act May 12, 1900, c. 393, 31 Stat., 177 (U. S. Comp. St. 1901, p. 2276), providing for the redemption of stamps used by mistake.' "

It will be observed that in the instant case appellant had written its protest against the imposition of the stamp taxes which emphasizes the sufficiency

of protest as much or more than in Johnson & Johnson *vs.* Herold, supra.

POINT 2.

APPELLANT COMPLIED WITH SECTION 3226 REVISED STATUTES.

The Court of Claims erred in holding that appellant did not comply with Section 3226 Revised Statutes as its amended claim was duly presented under the internal revenue laws and regulations of the Internal Revenue Bureau. Section 3226 Revised Statutes provides as follows:

> "no suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected * * * until appeals shall have been duly made to the Commissioner of Internal Revenue, *according to the provisions of law in that regard* * * * and a decision of the Commissioner has been had therein; *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought * * *."

The Court of Claims said in the Rock Island, Arkansas and Louisiana Railroad Company, 54th Court of Claims, p. 34, which case was affirmed by this court in 254 U. S., 141:

> "A cause of action for the erroneous or illegal assessment or collection of internal-

> revenue tax does not accrue before payment of the tax. An appeal for the abatement of the assessment may be authorized by law, but it is voluntary, and its rejection affords no basis for relief. The appeal for a refund, which can only be made after payment of the amount sought to have refunded, is not only authorized but is required, as a condition precedent to the maintenance of an action in any court for the recovery of the tax."

It will be noted that appellant shows by its petition (Rec., p. 1) that it did in the instant case exactly what the Court of Claims said must be done in the aforesaid excerpt from its decision. Appellant filed its suit as shown by the record, page 3, after rejection of its refund claim by the Commissioner of Internal Revenue as prescribed by Revised Statutes Section 3226.

POINT 3.

ROCK ISLAND, ARKANSAS & LOUISIANA RAILROAD COMPANY, 254 U. S, 141, DISTINGUISHED FROM CASE AT BAR.

The Court of Claims in its decision cites the case of Rock Island, Arkansas and Louisiana Railway Company *vs.* United States, 254 U. S., 141, as applicable in sustaining demurrer in the instant case. This is clearly error. The aforesaid case was an appeal from the Court of Claims (54th Court of

Claims 22) and in the decision of the Court of Claims at page 32 the cause of action is stated as follows:

> "Seeking to found its claim upon a law of Congress, it is necessary that the plaintiff show a compliance with that law. What the plaintiff in the instant case did was to apply to the Commissioner for an abatement of the assessment, using for that purpose Form 47 prescribed by the regulation. That application was rejected. Thereafter the plaintiff paid the tax to the collector, and without securing a decision by the Commissioner upon an appeal for a refund, and without invoking any action by him after payment, action was brought in this court nearly two years after the payment of the tax."

Contrast the aforesaid with the instant case and it will be observed that the facts in the adjudicated case are not identical with the case at bar and therefore not relevant in deciding the issues herein.

Appellant states in its petition that it filed its informal claim in abatement on February 11, 1915, in the Bureau of Internal Revenue and stated that no stamp tax should apply to the tendered deeds asked for a ruling of the Commissioner of Internal Revenue (Rec., p. 2), and the Commissioner of Internal Revenue on February 25, 1915, rejected the informal claim in abatement and held that the stamp tax should apply (Rec., p. 3). Upon the rejection of the informal claim in abatement appellant paid

the stamp tax on the deeds tendered and ten other deeds as it had no other alternative (Rec., p. 3).

The Court of Claims in the Rock Island, Arkansas and Louisiana Railroad Company at page 28 held:

> "Inasmuch as the statute authorizes the Commissioner to 'remit' the tax, it may be assumed that the regulations providing for an application to abate the tax find sufficient support in the authority granted to remit. No remedy, however, is provided in the event the Commissioner erroneously refuses to remit or abate the tax. Section 3224 provides that no suit for the purpose of restraining the assessment or collection of any tax shall be maintained in any court. The party assessed must accordingly pay the tax, and he may then appeal to the Commissioner for the refunding of it."

Appellant contended before the Commissioner of Internal Revenue that its claim for refund filed September 22, 1919 (Rec., p. 1), was a proper amendment to its informal claim in abatement under the internal revenue laws and regulation of the Bureau of Internal Revenue (Rec., p. 3). In the Rock Island, Arkansas and Louisiana Railroad Company case there was no claim for refund filed and no effort made to amend the claim for abatement filed by the appellant. The appellant sued without filing a claim for refund whereas appellant in the instant case filed an informal claim in abatement and amended it by a claim for refund and in

all respects complying with the statute and regulations.

It will thus be seen by a reading of appellant's petition that the cause of action herein shows a full compliance with the doctrine laid down by the court in the Rock Island, Arkansas and Louisiana Railroad case while the facts are entirely different than in the adjudicated case.

POINT 4.

THE COURT OF CLAIMS ERRED IN HOLDING SECOND ABATEMENT CLAIM NECESSARY TO BE FILED.

The Court of Claims said:

> "The Commissioner promptly complied with the request and *the plaintiff instead of asking for an abatement of the same thereafter purchased the stamps,* affixed them to the deeds, canceled the same and accepted the ruling of the Commissioner, never seeking in any manner to challenge its conclusiveness until some four years later it discovered in the decision of a case in which it was in nowise concerned there existed a possibility to proceed now as it should have proceeded four years ago."
>
> (Rec., p. 6.)

We think the aforesaid is clearly error as nowhere in the internal revenue laws and the regulations of the Bureau of Internal Revenue nor in the

practice before the Internal Revenue Bureau is it required that a second claim for abatement be filed in this or any other case. No authority is cited by the Court of Claims why this appellant was required to file another claim for abatement. It would have been mere repetition to have done so and the internal revenue laws and regulations do not provide for it. Appellant had already done everything required in its informal claim. It will also be noted that the stamp tax provision of the Act of October 22, 1914 (38 Stat., 745), imposes the assessment of stamp taxes on certain deeds of conveyance without assessment by the Commissioner of Internal Revenue and appellant by its informal claim in abatement tendering the deeds in question to the Commissioner of Internal Revenue and contending that the stamp taxes should not apply under the statute had made an informal claim in abatement under Regulation 14 revised of the Internal Revenue Bureau of the Treasury Department and which was recognized by the Commissioner of Internal Revenue in his letter of February 25, 1915, rejecting the informal claim and holding that the stamp taxes applied.

It has been held that:

> "Even if it were necessary to plead duress or protest the petition or complaint sets forth that the defendant computed the tax under compulsion of the regulations and filed a claim for abatement of the taxes assessed before payment. This complies with every requisite of a payment under protest.

Chesebrough *vs.* U. S., 192 U. S., 253; 24 Sup. Ct., 262; 48 L. Ed., 432; City of Philadelphia *vs.* Collector, 5 Wall., 720; 18 L. Ed., 614. The Government urges that it is necessary to make a protest at the time of actual payment, but it seems to the court that this would be a useless requirement. The objects of the protest are to define the taxpayer's attitude and to notify the Government thereof. These have been fully accomplished by the objection of the taxpayer when the computation was made and by the filing of his claim."

Greenport Basin & Construction Co. *vs.* United States, 269 Fed., 60.

Replying to that part of the Court of Claims' decision:

> "never seeking in any manner to challenge its conclusiveness until some four years later it discovered in the decision of a case in which it was in nowise concerned there existed a possibility to proceed now as it should have proceeded four years ago,"
> (Rec., p. 6.)

it will be observed that this court said in James, Administrator, *vs.* Hicks, 110 U. S., p. 144:

> "The plaintiff in his declaration alleged that he appealed to the Commissioner of Internal Revenue to refund the tax illegally collected and that his appeal was rejected by the Commissioner on January 22, 1879. To this declaration the defendant pleaded that

the appeal to the Commissioner to refund the money exacted was filed in his office on February 8, 1866, and was rejected on May 7, 1866. To this the plaintiff replied that the appeal referred to in the plea was not duly made, and that it was not rejected on its merits, but because it had not been made and certified on proper forms as required by the Treasury regulations; and that afterwards, on Januaury 8, 1868, he made an appeal in due form, which was entertained by the Commissioner, and finally decided and rejected on January 22, 1879. The finding of fact on this issue by the court is as follows:

" 'The issues in fact being tried and determined by the court in this cause upon a stipulation in writing by the parties through their respective counsel, filed under section 649, Revised Statutes of the United States, the court find the facts as proved, under the special plea of the Statute of Limitations, to be that the suit was brought within six months after the final rejection of the plaintiff's appeal made to the Commissioner of Internal Revenue at Washington, the same having been pending before the Commissioner from the time the appeal was perfected on Form 46, according to the provisions of law and the regulations of the Secretary of the Treasury made in pursuance thereof. It is further found that the delay in the consideration of the appeal by the Commissioner after its perfection on Form 46 and the signature of the proper officers required by law was occasioned by the loss of the original papers filed with the depart-

ment by the plaintiff or his attorney, and required by law to be kept there.'

"Judgment was rendered in favor of the plaintiff below, to reverse which is the object of the present proceeding.

"It is alleged as error, in the first place, that the court should have treated the appeal rejected for informality as the basis for determining the time within which the suit ought to have been brought. But that appeal was not so treated by the Commissioner, who rejected it for mere informality and entertained the subsequent appeal, made in proper form, as rightly prosecuted. The latter, in our opinion, was the appeal contemplated by the statute."

James, Administrator, *vs.* Hicks, 110 U. S., 144, 145.

POINT 5.

DEEDS CONTAINED ONLY A NOMINAL CONSIDERATION AND WERE NOT TAXABLE.

The petition alleges:

> "Each of said tendered deeds contained only a nominal consideration and conveyed property of each of the subsidiary corporations to the parent corporation."
>
> (Rec., p. 2.)

If there were any doubt as to the letter of February 11, 1915, constituting an informal claim, that doubt should be removed by consideration of the circumstances and time when it was made. The

Baltimore and Ohio Railroad Company, the appellant here, was at that time preparing to issue its Refunding and General Mortgage providing for a bond issue limited, except under certain conditions, to the sum of $600,000,000. Among the preliminary transactions that were necessary to be promptly consummated was that of transferring the title to property of various subsidiary companies into the name of the real owner, The Baltimore and Ohio Railroad Company. Under the provisions of the law under which this tax was collectible the deeds for so transferring title could not be properly and legally recorded unless they contained stamps if the same were taxable. Again the statute is a self-assessing statute, and the alternative procedure which the railroad could have taken was, (1) to stamp the deeds and record them and then file a claim for refund, or (2) to file claim in advance of the time for recording that the statute did not assess a tax upon the particular transaction. The effect of the two procedures is exactly the same. Each is a claim that this self-assessing statute imposes no tax upon the particular transaction.

It is respectfully submitted in the face of a decision by the Bureau of Internal Revenue that the tax applied, the Bureau of Internal Revenue could not and certainly ought not to be allowed to take refuge behind the statutes imposing the two-year limitation to avoid a claim for refund upon a subsequent decision of the Bureau of Internal Reve-

nue reversing the earlier decision. While no one would suppose that the Bureau of Internal Revenue would do such a thing purposely, still it leaves the Bureau of Internal Revenue in the position of being able to defeat a perfectly legitimate claim for refund through its failure to correct an erroneous ruling, and the case might well arise where the two-year period would expire simply on account of the length of time it takes to put anything through the Bureau of Internal Revenue. The fairness of this view is emphasized by the provision in the Revenue Act of 1921, Section 1314, as follows:

> "RETROACTIVE REGULATIONS.
>
> "Sec. 1314. That in case a regulation or treasury decision relating to the internal revenue laws made by the Commissioner or the Secretary, or by the Commissioner with the approval of the Secretary, is reversed by a subsequent regulation or treasury decision, and such reversal is not immediately occasioned or required by a decision of a court of competent jurisdiction, such subsequent regulation or treasury decision may, in the discretion of the Commissioner, with the approval of the Secretary, be applied without retroactive effect."

The court will respectfully note that in paragraph five of plaintiff's petition it is stated:

> "The provision of the Internal Revenue Act of October 22, 1914 (38 Stat., 745), relating to deeds of conveyance is identical

with the provisions of the internal-revenue statute of February 24, 1919 (40 Stat., 1057), relating to deeds of conveyance, and the ruling of the acting Commissioner of Internal Revenue of April 18, 1919, relating to deeds of conveyance from subsidiary to parent corporation for a nominal consideration applies with equal force to the Internal Revenue Act of October 22, 1914 (38 Stat., 745), relating to deeds of conveyance." (R., 3.)

"The sections of the 1914 and 1918 statutes as aforesaid are as follows:

Act of October 22, 1914 (38 *Statute*, 745).

SCHEDULE A.

Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien, or encumbrance thereon, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof in excess of $500, 50 cents; *Provided:* That nothing contained in this paragraph shall be so construed as to impose a tax upon an instrument or writing given to secure a debt."

Act of 1918 (*Enacted February* 24, 1919, 40 *Statute*, 1057).

SUBDIVISION 7, SCHEDULE A.

Conveyances: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value of the interest or property conveyed, exclusive of the value of any lien or encumbrance remaining thereon at the time of sale, exceeds $100 and does not exceed $500, 50 cents; and for each additional $500 or fractional part thereof, 50 cents. This subdivision shall not apply to any instrument or writing given to secure a debt."

In Mastin *vs.* Mastin, 99 Fed., pages 435-436, the court, in passing upon deeds of conveyance where there is no valuable consideration under the Act of June 13, 1898, on the section "Conveyance" in said act which is identical with the section of conveyance in the Act of October 22, 1914, said:

> "The receiver, Hugh C. Ward, heretofore appointed by the court in the above-entitled cause, on the final decree of the court winding up the administration of said estate, being required to execute a deed of release back to the above-named parties, has submitted to this court for its ruling the question as to whether or not, under the internal revenue laws of the United States, he is required to place upon such deed of release revenue stamps, and, if so, to what extent. The provision of the revenue law is as follows:
>
> " 'Conveyance: Deed, instrument, or writing, whereby any lands, tenements, or other realty sold shall be granted, assigned, transferred, or otherwise conveyed to, or vested in, the purchaser or purchasers, or any other person or persons, by his, her, or their direction, when the consideration or value exceeds one hundred dollars and does not exceed five hundred dollars, fifty cents; and for each additional five hundred dollars or fractional part thereof in excess of five hundred dollars, fifty cents.'
>
> "Whatever may be said in respect of the controlling words in said section, it clearly enough applies alone to the instance of a

sale and transfer of property to a purchaser between whom something of value invested in and belonging to the grantor passes to the grantee, whereby the grantee receives a benefit capable of estimation in money value. In this case, upon the petition of one of the partners, for the purpose of winding up the co-partnership, the partnership estate was placed in *custodia legis,* and a receiver was appointed solely for the purpose of administration. By the decree of the court granting the injunction and appointing the receiver, the co-partners were required to place their title to the property in the receiver. This was merely for the purpose and convenience of judicial administration. No valuable consideration passed from the receiver to the grantors. Without such order of court, and without such conveyance, by operation of law, under the decree of the court appointing the receiver, the right, title, and interest of the parties passed to, and vested in, the receiver *pendente lite,* which would have enabled the receiver, under the order and direction of the court, to make sales and conveyances of the property. Such deeds by the receiver unquestionably would have required the requisite revenue stamp. The conveyances made by the parties to the receiver, in compliance with the order of the court, were essentially conveyances in *invitum* on the part of the grantors, and were essentially conveyances made by operation of law, solely for the better convenience and purposes of administration *pendente lite.* It is unlike the instance of a

conveyance by the owner of property to a designated trustee to hold in trust for the security of a beneficiary, under which a deed terminating such trust, and revesting the title, 'should be stamped according to the amount required on the trust deed that is released or terminated.' But in the case under consideration the transfer of the title to the receiver was but supplemental and ancillary to the transfer by operation of law under the decree, and was not made for the better security of any designated debt or claim. Therefore, on the final decree of the court, after the purposes of the judicial proceeding were accomplished, the court could have decreed the title thus vested in the receiver back to the copartners, and the title would have revested by simple operation of the decree in them. In such case, there could be no pretense that such reinvestiture constituted a conveyance, within the meaning of the revenue law. The fact that the court, in addition to the decree itself, made the further provision or requirement that the receiver should remise and release to the parties this title taken in *custodia legis,* ought not to produce a different result, in so far as the revenue laws are concerned. In such case no consideration passes from the grantees to the grantor. The receiver receives nothing, and the grantees pay nothing. And, in the judgment of the court, it is not within either the letter or the spirit of said provision of the revenue law that such transfers come within the purview of sales and purchases contemplated by

> the act. In such case the receiver has no discretion but to obey the decree of the court. And, as he is but the 'right arm' of the court, he but acts in the retransfer as the instrument of the court; and when the deed is executed the grantees but receive what, in law and equity, is their own, and it would be unconscionable to exact of either a tax upon such deed."

It has been well stated:

> Statutes must have a reasonable construction, and the language must be interpreted with reference to the subject matter and the general course of business to which they relate, and in such manner that the beneficent provisions of remedial laws may not be thwarted by nice technicalities not within the minds of legislators (Wilcox's Case, 95 U. S. R., 661, affirming the judgment of this court in same case, 12 C. Cls. R., 595).
>
> Real Estate Savings Bank *vs.* United States, 16 C. Cl., 346; affirmed in 104 U. S., 728.

CONCLUSION.

It is respectfully submitted that the judgment of the Court of Claims should be reversed for the following reasons:

1. The petition states facts sufficient to constitute a cause of action and said cause of action is within the jurisdiction of the Court of Claims.

2. That the statute of limitations in the Act of May 12, 1900 (31 Stat., 177), is no bar to the cause of action.

3. That the deeds were given for a nominal consideration and therefore are not taxable.

Very respectfully,

George E. Hamilton,
John F. McCarron,
Attorneys for Appellant.

R. Marsden Smith,
Of Counsel.

In the Supreme Court of the United States.

OCTOBER TERM, 1922.

BALTIMORE & OHIO RAILROAD COMPANY, appellant,
v.
THE UNITED STATES.
No. 99.

ON APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR THE UNITED STATES.

STATEMENT OF THE CASE.

This appeal is from a judgment of the Court of Claims sustaining the demurrer of the United States to the appellant's petition.

On November 30, 1920, the appellant filed in the Court of Claims its petition setting forth in substance the following facts as constituting a cause of action against the United States:

On October 29, 1915, it purchased and affixed to 13 certain deeds of conveyance, internal-revenue stamps to the amount of $55,158 pursuant to the act of October 22, 1914, 38 Stat. 745, ch. 331. These deeds were dated October 1, 1915, and it is alleged that they were given without any valuable consideration passing from the grantor companies to the grantee company, the petitioner. The grantor companies were subsidiaries of the petitioner and the object of the deeds was to enable the petitioner to

15535—22——1

mortgage its entire property to meet its urgent needs (p. 1).

On February 11, 1915—that is, more than seven months prior to the date of the deeds in question—the claimant filed in the Bureau of Internal Revenue what it calls in the petition "its informal claim in abatement," in which it set forth in detail three of the deeds of conveyance, stating that no stamp tax should apply to these tendered deeds and asked for a ruling of the commissioner (p. 2). The document characterized as an "informal claim in abatement" is not set forth in the petition. The commissioner, by letter of February 25, 1915, "rejected the informal claim in abatement and held that the stamp tax applied." Thereupon the claimant paid the stamp tax on the 3 deeds submitted to the commissioner and also upon the other 10 deeds (p. 3).

Nothing more was done about the matter until September 22, 1919—that is, for about four years. On September 22, 1919, the petitioner filed a claim for refund of these stamp taxes, basing its claim upon a ruling of the Acting Commissioner of Internal Revenue, dated April 18, 1919, in a letter to the Corporation Trust Co. of New York, in which he stated: "You are advised that the deeds of conveyance in question are not subject to stamp tax under subdivision 7, Schedule A, act of 1918, provided that no valuable consideration passed from the grantee to the grantor."

On October 2, 1919, the Commissioner of Internal Revenue rejected this claim upon the ground that

the stamps in question having been purchased in 1915, were barred from redemption by the two years' limitation imposed by the act of May 12, 1900 (31 Stat. 177), (p. 2).

On December 22, 1919, the petitioner wrote to the Commissioner of Internal Revenue asking for a hearing and, as stated in the petition, "vigorously dissenting from his action rejecting its claim" and stating that the two years' limitation provided in the act mentioned had no application to its claim for refund (p. 2).

The hearing was granted, at which the petitioner contended and now contends "that its informal claim in abatement has been properly amended and perfected and duly presented under the internal-revenue laws and the regulations of the Bureau of Internal Revenue." The commissioner disallowed the claim, to which ruling the petitioner protested on December 22, 1919, and March 12, 1920 (p. 3), and these protests being of no avail, this suit was begun.

In sustaining the demurrer of the United States, the Court of Claims held that the commissioner was right in rejecting the claim; that the claim was barred by the statute of limitations; that the contention made by the claimant that its claim for refund filed in 1919 was nothing more than an amendment of its so-called informal claim for abatement filed in 1915 which was by this belated process converted into a primary claim for a refund, was without merit. The statutory provisions involved are the following:

The Statutory Provisions.

R. S., section 3220, as amended by section 1316–*a*, act of February 24, 1919, provides:

> The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, is authorized to remit, refund, and pay back all taxes erroneously or illegally assessed or collected, all penalties collected without authority, and all taxes that appear to be unjustly assessed or excessive in amount, or in any manner wrongfully collected; also to repay to any collector or deputy collector the full amount of such sums of money as may be recovered against him in any court, for any internal-revenue taxes collected by him, with the cost and expenses of suit; also all damages and costs recovered against any assessor, assistant assessor, collector, deputy collector, agent, or inspector, in any suit brought against him by reason of anything done in the due performance of his official duty, and shall make report to Congress at the beginning of each regular session of Congress of all transactions under this section.

R. S., section 3226 (Comp. Stat., sec. 5949), provides:

> No suit shall be maintained in any court for the recovery of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, until appeal shall have

> been duly made to the Commissioner of Internal Revenue, according to the provisions of law in that regard, and the regulations of the Secretary of the Treasury established in pursuance thereof, and a decision of the commissioner has been had therein: *Provided,* That if such decision is delayed more than six months from the date of such appeal, then the said suit may be brought, without first having a decision of the commissioner, at any time within the period limited in the next section.

R. S., section 3227 (Comp. Stat., sec. 5950), provides:

> No suit or proceeding for the recovery of any internal-revenue tax alleged to have been erroneously or illegally assessed or collected, * * * or of any sum alleged to have been excessive or in any manner wrongfully collected, shall be maintained in any court, unless the same is brought within two years next after the cause of action accrued: * * *.

R. S., section 3228 (Comp. Stat., sec. 5951), provides:

> All claims for the refunding of any internal tax alleged to have been erroneously or illegally assessed or collected, or of any penalty alleged to have been collected without authority, or of any sum alleged to have been excessive or in any manner wrongfully collected, must be presented to the Commissioner of Internal Revenue within two years next after the cause of action accrued: *Provided,* That claims which accrued prior to June six, eighteen hundred and seventy-two,

> may be presented to the commissioner at any time within one year from said date. But nothing in this section shall be construed to revive any right of action which was already barred by any statute on that date.

The act of May 12, 1900, as amended by the act of June 30, 1902 (Comp. Stat., sec. 6346), provides:

> 6346. *Redemption of spoiled stamps, etc.*—The Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled, destroyed, or rendered useless or unfit for the purpose intended, or for which the owner may have no use, or which through mistake may have been improperly or unnecessarily used, or where the rates or duties represented thereby have been excessive in amount, paid in error, or in any manner wrongfully collected. * * * *Provided further*, That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government, excepting documentary and proprietary stamps issued under the act of June thirteenth, eighteen hundred and ninety-eight, which stamps may be redeemed as hereinbefore authorized, upon presentation prior to the first day of July, nineteen hundred and four.

ARGUMENT.

On October 29, 1915, when the stamps were canceled, plaintiff's claim accrued, and that date marked the beginning of the time in which the plaintiff must do something in order to secure a refund of the amount paid for the stamps. The *claim* most certainly had accrued. If the plaintiff had already taken the steps necessary to perfect its cause of action, that cause of action had accrued and suit must have been begun within two years under section 3227 of the Revised Statutes, for the suit was one for the recovery of an internal-revenue tax alleged to have been erroneously or illegally assessed or collected. Upon the assumption that the cause of action was not yet complete and that something more must be done in order to permit the plaintiff to sue, a claim for refund must have been presented to the Commissioner of Internal Revenue within two years under section 3228 of the Revised Statutes. That section says that all claims for refund of any internal tax alleged to have been erroneously or illegally assessed or collected must be presented to the commissioner within two years "next after the cause of action accrued." The words in this section "cause of action" obviously mean the same as the word *claim*. The plaintiff did neither of these things nor did it make claim for allowance or redemption under the act of May 12, 1900, as amended. It neither presented a claim for refund nor brought suit, but waited for four years until some one more diligent had procured a ruling from the commissioner

which restored the plaintiff's hope of recovering the money, a hope which seems to have been abandoned four years before. Mindful of the limitations imposed by the law against claims against the United States, the plaintiff looked around for some means of avoiding what was apparently a hopeless case, and hit upon the expedient of trying to make the collector believe that a wholly new claim for refund could in some way be regarded as an amendment of his so-called informal claim submitted four years before. Neither the collector nor the Court of Claims, however, yielded to such a specious plea. The claim filed with the commissioner on September 22, 1919, can by no possible reasoning be treated as an amendment of an existing claim. During the four years there was no claim pending before the commissioner, and therefore there was nothing to amend. It must be remembered that these stamps were canceled on October 29, 1915. The transactions between the plaintiff and the Commissioner of Internal Revenue which constitute the informal claim took place in the month of February preceding. No letters or papers bearing upon these transactions are set forth in the petition and it is certainly informal pleading to designate a paper as "an informal claim for abatement" without setting it forth. It is said of this "informal claim" in appellant's brief (page 7, "Had it been on the regular form prescribed by the Bureau of Internal Revenue for a claim for abatement of taxes it could not have been more clearly shown and the protest made with more emphasis than was

set forth in the informal claim for abatement." This is a mere conclusion of the pleader. Enough is set forth, however, to make it apparent that some seven or eigh months before these deeds were ready for execution, and while they were in course of preparation, the plaintiff or its attorneys addressed a letter to the Commissioner of Internal Revenue asking for a ruling on the question of the necessity of attaching revenue stamps to the proposed deeds and inclosing three specimen deeds. The commissioner notified them two weeks later that the stamps must be affixed to the deeds. When the deeds were ready for execution they were duly stamped in accordance with this ruling. That transaction then became a closed incident. There was nothing further to be done except to do what the law required them to do if they desired to obtain from the Government a refund of what they had paid for the stamps; that is, to file a claim for refund with the Commissioner of Internal Revenue. This they did not do, and to call the formal and proper claim for refund which they filed four years later, after they found that some diligent person had not been idle meanwhile, an "amendment," is to give to the word a meaning not only contrary to the commonly understood meaning of such language but is to destroy the wholesome provisions of the law requiring claims against the United States to be presented seasonably and, if rejected, to be sued upon promptly. As the Court of Claims said in its opinion:

> The widest latitude has been allowed the vigilant in the matter of amendment of claims for refund of illegal taxes, but no authority has been cited wherein the courts have gone to the extreme, no matter how apparent the equities of the situation, in sustaining a claim after a long repose and which would doubtless have continued in such a state save for the persistence and vigilance of a later and another claimant, the ruling in whose case affords prospects of recovery for an abandoned claim.

To sustain the contention of the plaintiff in this case would be, in effect, to hold that the statute of limitations could never run against such claims if, before paying the tax a taxpayer asked and obtained from the Commissioner of Internal Revenue a ruling which was against him. If after doing that and paying the tax he could wait four years, it would be just as logical to say that he could wait any number of years and then file a claim for refund and call it an amendment of his original letter of inquiry. The statutes of the United States can not be given any such loose interpretation. It is obvious that a claim for refund can not be made until after the tax has been paid and when the statute says that the claim for refund must be made, it means literally what its words imply.

Rock Island, etc., R. R. Co. v. *United States*, 254 U. S. 141.

Kings Co. Savings Institution v. *Blair*, 116 U. S. 200.

In the case of *Rock Island, etc., R. R. Co.* v. *United States*, 254 U. S. 141, a tax was assessed under the act of August 5, 1909, and after the tax was assessed a claim for an abatement was sent to the Commissioner of Internal Revenue in July, 1913. On December 18 of the same year the application was rejected, whereupon the claimant paid the tax with interest and a penalty. So far as appears, there was no sign of protest at the time of payment and after that nothing was done to secure a repayment of the tax. The Court of Claims dismissed the petition, and this court affirmed its judgment.

This court, Mr. Justice Holmes writing, said:

> Regulations of the Secretary established a procedure and a form to be used in applications for abatement of taxes, and distinct ones for claims for refunding them. The claimant took the first step but not the last.

After quoting sections 3226 and 3220 of the Revised Statutes, the court continued:

> It is urged that the "appeal" to him to remit made a second appeal to him to refund an idle act and satisfied the requirement of § 3226. Decisions to that effect in suits against a collector are cited, the latest being *Loomis* v. *Wattles*, 266 Fed. Rep. 876. But the words "on appeal to him made" mean, of course, on appeal in respect of the relief sought on appeal, to refund, if refunding is what he is asked to do. The words of § 3226 also must be taken to mean an appeal after payment, especially in view of § 3228, requiring claims

of this sort to be presented to the commissioner within two years after the cause of action accrued. So that the question is of reading an implied exception into the rule as expressed, when substantially the same objection to the assessment has been urged at an earlier stage.

Men must turn square corners when they deal with the Government. If it attaches even purely formal conditions to its consent to be sued, those conditions must be complied with. Lex non praecipit inutilia (Co. Litt. 127b) expresses rather an ideal than an accomplished fact. But in this case we can not pronounce the second appeal a mere form. On appeal a judge sometimes concurs in a reversal of his decision below. It is possible, as suggested by the Court of Claims, that the second appeal may be heard by a different person. At all events, the words are there in the statute and the regulations, and the court is of opinion that they mark the conditions of the claimant's right. See *Kings County Sav. Inst.* v. *Blair*, 116 U. S. 200. It is unnecessary to consider other objections that the claimant would have to meet before it could recover upon this claim.

The case of *Kings County Savings Institution* v. *Blair*, 116 U. S. 200, was an action brought against a collector of internal revenue for taxes claimed to have been illegally collected. The Circuit Court gave judgment for the defendant and upon writ of error to this court the judgment was affirmed. The

defense pleaded was that the claim for refund of the tax was not presented to the Commissioner of Internal Revenue within two years after the claim had accrued.

The court quoted from the regulations then in force showing that the claims for refund of taxes must be made upon form 46; that all the facts relied upon in support of the claim should be clearly set forth under oath; that the claims should be supported by the certificate of the assistant assessor of the proper division and by the certificate of the assessor and collector; that the affidavit should state the business in which the claimant was engaged, when and by what assessor he was assessed, the amount of the tax and when he paid it and to what collector, the reason for the erroneous assessment, and that he had not theretofore presented any claim for the refunding of the tax or any part of it. The court refers to the form of the deputy collector's certificate to be indorsed on the claimant's affidavit to the effect that he had carefully investigated the facts set out in the affidavit and believe the statement in all respects to be true. Then follows the form of the collector's certificate showing, among other things, that upon personal examination he found a certain sum, naming the amount reported against the claimant, giving the page and number of the list and the number and date of the form where it was to be found, and that the same was paid to him on a certain day and was included in his aggregate receipt

for said list. The court regarded these regulations as of importance and said:

> All the safeguards prescribed by the Secretary of the Treasury for the protection of the public interest, in his regulations respecting claims for the refunding of taxes, have been disregarded. There has been no claim whatever in the sense of the law.

After quoting sections 3220 and 3228 of the Revised Statutes, the court says:

> The contention of the plaintiff in error, therefore, amounts to this: That a protest upon its return for taxation against the requirements of the form on which the return is made, accompanied by an amended return, made out according to the plaintiff's construction of the law, is such a claim to the Commissioner of Internal Revenue for the refunding of a tax illegally collected, as is required by the law and the regulations of the Secretary of the Treasury.
>
> We think there is no ground for this contention to rest on. No claim for the refunding of taxes can be made according to law and the regulations until after the taxes have been paid. It is not pretended that since the payment of the tax by the plaintiff any one of the steps required by the law and regulations to make an effectual claim for the refunding of the tax has been taken. All the safeguards prescribed by the Secretary of the Treasury for the protection of the public interests, in his regulations respecting claims

> for the refunding of taxes, have been disregarded. There has been no claim whatever in the sense of the law.
>
> In our opinion no suit can be maintained for taxes illegally collected unless a claim therefor has been made within the time prescribed by the law. When the law says the claim must be presented within two years, the implication is that unless so presented the right to demand the repayment of the tax is lost, and the commissioner has no authority to refund it; and of course the right of suit is gone. We regard the presentation of the claims to the Commissioner of Internal Revenue for the refunding of a tax alleged to have been illegally exacted as a condition on which alone the Government consents to litigate the lawfulness of the original tax. It is clearly not the intent of the statute to allow the collector to be sued unless the taxpayer has first applied for relief to the commissioner within the time and in the manner pointed out by law and relief has been denied him.

The regulations in force at the time the tax in the present case was paid were substantially the same, and Form 46, upon which claims for a refund were required to be made by the regulations, was also substantially the same. And in addition to the matters referred to by the court in the *Kings Co. Savings Institution Case*, they required in the case of a claim for refunding an amount paid for stamps, a certificate by the collector of the purchase of the stamps. See Regulations No. 14, revised 1911. It

is quite apparent, therefore, that what the plaintiff in this case did in the year 1915 was in no sense a compliance with any of the provisions of law respecting refund of taxes. In the first place no such claim can be made until after the tax has been paid. There is nothing to show that the Commissioner of Internal Revenue ever knew that the stamps had been bought until the claim for refund was made in the year 1919. Of course, the commissioner may very properly disregard a mere informality and permit an amendment where the original claim in some substantial way complied with the necessities of the case, but, where the first intimation that a tax claimed to be erroneous has in fact been paid is presented to the commissioner four years after the tax has been paid, it must be obvious that such claim is the only claim which by any fair construction of law and the regulations can be considered as a request or demand to the commissioner for the refunding of the tax. It is the first claim upon which the commissioner could set in motion the machinery of his office to check it up for the purpose of rendering a decision, and the law says that this must be done within two years. Plainly nothing can be regarded as a claim for a refund which does not at least inform the commissioner that money has been paid to the United States and that the person who paid it asks for its return.

In the case at bar the claim for abatement, whether it be called formal or informal, amounted to nothing.

Even if it had been a formal claim for abatement on form 47, it would have been futile as the basis for a suit. It was admittedly made before the stamps were purchased, while the claim for refund can not be made until after the tax has been paid. It is the claim for *refund*, not a claim for *abatement*, which is a prerequisite to bringing suit. Something which was a nullity, of no legal effect at all, and having no possible application to the matter, can not, four years after, and after the statute of limitations has run, be revived and given legal effect as a condition precedent to the institution of a suit by calling it an amendment of what was done four years before and before any claim had arisen. The position of the plaintiff seems to be that while it was of no effect to establish a cause of action against the United States, upon which it could sue, nevertheless, it was perfectly effectual in preventing the statute of limitations from running. These two positions are wholly inconsistent. If the claim, though informal, be considered a claim for refund, then the suit should have been brought within two years. If the claim, though informal, was not in substance a claim for refund, then a proper claim for refund should have been filed within two years. If the claim for abatement of the tax amounted to a claim for a refund of the tax, this suit was not instituted within two years after the cause of action accrued. If the claim for an abatement of the tax did not amount to a claim for a

refund, then no claim for a refund was made within two years after the claim accrued.

For these reasons the judgment appealed from should be affirmed.

JAMES M. BECK,
Solicitor General.
ALFRED A. WHEAT,
Special Assistant to the Attorney General.

OCTOBER, 1922.

O

BALTIMORE & OHIO RAILROAD COMPANY *v.* UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

No. 99. Submitted November 16, 1922.—Decided January 2, 1923.

1. An action to recover money paid as stamp taxes under the Act of May 12, 1900, as amended June 30, 1902, can not be maintained if no claim for redemption or allowance was made to the Commissioner of Internal Revenue within the two-year period prescribed by the act. Rev. Stats., § 3226. P. 567.

2. A request to the Commissioner for an informal ruling on the taxability of particular deeds, after which stamps were affixed in accordance with the ruling and without protest, *held* not a claim for abatement or refund. P. 567.

56 Ct. Clms. 279, affirmed.

APPEAL from a judgment of the Court of Claims dismissing appellant's petition on demurrer.

***Mr. George E. Hamilton, Mr. John F. McCarron* and *Mr. R. Marsden Smith* for appellant.**

***Mr. Solicitor General Beck* and *Mr. Alfred A. Wheat*, Special Assistant to the Attorney General, for the United States.**

MR. JUSTICE SUTHERLAND delivered the opinion of the Court.

The appellant brought an action in the Court of Claims against the United States to recover the sum of $55,-158.00, alleged to have been illegally exacted as stamp taxes upon thirteen deeds of conveyance made and delivered to appellant by its subsidiary companies. The deeds were without valuable consideration and were executed for the sole purpose of transferring legal title to enable appellant to mortgage the property conveyed. On February 11, 1915, before the delivery of these deeds, appellant exhibited three of them to the Commissioner of Internal Revenue and asked for a ruling, thereby making what it alleges was a claim in abatement. The Commissioner held that the Stamp Tax Act applied and the appellant, without protest, affixed to the thirteen deeds the requisite amount of stamps.

Four years later the Commissioner, in construing a similar act of 1918 held that "where no valuable consideration passed, stamps were not required on conveyances."

Appellant thereupon filed with the Commissioner a claim for refund of the taxes paid which was rejected because barred by the statute of limitations.

Appellant now alleges that its claim for a refund constitutes an amendment of its original so-called claim in abatement. The Court of Claims sustained a demurrer to appellant's petition alleging the foregoing upon the ground that the original request to the Commissioner for a ruling was not a claim either for abatement or refund, but that the claim for a refund was in effect first made in 1919, and, therefore, that the Commissioner's ruling was right.

The Act of May 12, 1900, c. 393, 31 Stat. 177, as amended by the Act of June 30, 1902, c. 1327, 32 Stat. 506, provides in part:

"That the Commissioner of Internal Revenue, subject to regulations prescribed by the Secretary of the Treasury, may, upon receipt of satisfactory evidence of the facts, make allowance for or redeem such of the stamps, issued under authority of law, to denote the payment of any internal-revenue tax, as may have been spoiled . . . or in any manner wrongfully collected. . . . *Provided further,* That no claim for the redemption of or allowance for stamps shall be allowed unless presented within two years after the purchase of said stamps from the Government."

By § 3226, Rev. Stats., no suit can be maintained in any court for the recovery of any internal revenue tax alleged to have been erroneously or illegally collected until appeal has been made to the Commissioner of Internal Revenue, as provided by law, and the decision of the Commissioner thereon has been had.

The preliminary request to the Commissioner for an informal ruling was in no sense a claim for abatement or refund. Appellant affixed the stamps to the deeds without protest and after that no effort was made to secure redemption of or allowance for the stamps until long after the two-year period had expired.

On the facts alleged in the petition the Court of Claims could not have done otherwise than sustain the demurrer. *Rock Island, Arkansas & Louisiana R. R. Co.* v. *United States,* 254 U. S. 141.

The judgment of the Court of Claims is

Affirmed.